

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000033-001 DT

04/17/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

CARLOS D WARD (001)

MARK N WEINGART

MESA MUNICIPAL COURT - COURT
ADMINISTRATOR
MESA MUNICIPAL COURT -
PRESIDING JUDGE
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2010-103365.

Defendant-Appellant Carlos D. Ward (Defendant) was convicted in Mesa Municipal Court of driving under the influence. Defendant contends the trial court erred in finding his Michigan DWI conviction was a prior conviction for sentencing purposes. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On December 4, 2010, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2). The State subsequently alleged Defendant had a prior DWI conviction from Michigan. Defendant pled guilty to the Arizona DUI charges, but contested whether his Michigan DWI conviction would be considered a prior DUI conviction under Arizona law. After receiving exhibits in evidence and hearing arguments of counsel, the trial court ruled Defendant's prior Michigan DWI conviction would be considered a prior DUI conviction under Arizona law. (R.T. of May 9, 2011, at 26.) The trial court then imposed sentence. (*Id.* at 26-31.) On May 10, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID THE TRIAL COURT ERR IN FINDING DEFENDANT'S PRIOR MICHIGAN DWI CONVICTION WOULD BE CONSIDERED A PRIOR DUI CONVICTION UNDER ARIZONA LAW.

Defendant contends the trial court erred in finding his prior Michigan DWI conviction would be considered a prior DUI conviction under Arizona law. As applied to the present case, the Arizona statute provides as follows:

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If within a period of 84 months a person is convicted of . . . a violation of this section and has previously been convicted of . . . an act in another jurisdiction that if committed in this state would be a violation of this section

A.R.S. § 28–1381(K). The Arizona DUI statute provides in part as follows:

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

1. While under the influence of intoxicating liquor . . . if the person is impaired to the slightest degree.

A.R.S. § 28–1381(A)(1). The applicable Michigan DWI statute provides as follows:

(1) A person . . . shall not operate a vehicle upon a highway . . . if the person is operating while intoxicated. As used in this section, “operating while intoxicated” means any of the following:

(a) The person is under the influence of alcoholic liquor

. . . .

(3) A person . . . shall not operate a vehicle upon a highway . . . when, due to the consumption of alcoholic liquor . . . the person’s ability to operate the vehicle is visibly impaired. . . .

MICH. VEH. CODE (M.V.C.) § 257.625.

In order to violate A.R.S. § 28–1381(A)(1), the person must (1) drive or be in actual physical control of a vehicle, (2) while under the influence of intoxicating liquor, and (3) [be] impaired to the slightest degree. Further, the statute does not require a person to have consumed alcohol to the extent their ability to drive is impaired, it only requires “that the ‘person’ was impaired, for example, in judgment.” *State v. Miller (Oliveri)*, 226 Ariz. 190, 245 P.3d 454, ¶ 10, (Ct. App. 2011).

Defendant contends his conviction for violating M.V.C. § 257.625(3) would not be a violation of A.R.S. § 28–1381(A)(1) because, in Michigan, a person “under the influence of alcoholic liquor” would violate § 257.625(1)(a), while a person whose “ability to operate the vehicle is visibly impaired” would violate § 257.625(3), thus a conviction of § 257.625(3) would not establish the person was “under the influence of alcoholic liquor.” While Michigan has chosen to split the concepts of “under the influence of alcoholic liquor” and “ability to operate the vehicle is visibly impaired,” Arizona has not:

Assuming it is possible to be under the influence without also being impaired to the slightest degree, it follows from Smith’s own reasoning that a defendant who is impaired to the slightest degree by alcohol is, at minimum, also under its influence.

State v. Smith, 228 Ariz. 126, 263 P.3d 675, ¶ 11 (Ct. App. 2011). *Smith* recognized it is theoretically possible for a person to drink alcohol and become “under the influence without also being

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impaired to the slightest degree,” and then continue to drink alcohol to the point the person becomes “impaired to the slightest degree.” Thus, a person “who is impaired to the slightest degree by alcohol is, at minimum, also under its influence.” Because the prosecutor in Michigan, in order to establish a violation of § 257.625(3), had to show Defendant’s “ability to operate the vehicle [was] visibly impaired,” under Arizona law, that would establish both that Defendant was under the influence of alcohol and was impaired by the alcohol. This Court therefore concludes the trial court correctly found Defendant’s conviction for a violation of M.V.C. § 257.625(3) established all the elements of A.R.S. § 28–1381(A)(1), and thus was a prior DUI conviction under A.R.S. § 28–1381(K).

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court correctly found Defendant’s prior Michigan DWI conviction was a prior DUI conviction under Arizona law.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Mesa Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Mesa Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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